

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 221 CS Per Diem and Travel Expenses
SPONSOR(S): Ausley and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 778

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|-----------------------|-----------------|-----------------|
| 1) <u>Governmental Operations Committee</u> | <u>5 Y, 0 N, w/CS</u> | <u>Brazzell</u> | <u>Everhart</u> |
| 2) <u>Fiscal Council</u> | <u></u> | <u>Dobbs</u> | <u>Kelly</u> |
| 3) <u>State Administration Council</u> | <u></u> | <u></u> | <u></u> |
| 4) <u></u> | <u></u> | <u></u> | <u></u> |
| 5) <u></u> | <u></u> | <u></u> | <u></u> |

SUMMARY ANALYSIS

HB 221 changes allowances for traveling public officers, public employees, and authorized persons. The bill distinguishes between "state travelers" and "nonstate travelers" (though these terms are not defined) and increases allowances as follows:

- o Per diem allowances--from \$50 to \$90 for state travelers and nonstate travelers.
- o Subsistence allowances--from \$3, \$6, and \$12 for breakfast, lunch, and dinner respectively to \$5 for breakfast, \$11 for lunch, and \$23 for dinner for state travelers and nonstate travelers.
- o Mileage allowance--from 29 cents per mile to 38 cents per mile for state travelers and nonstate travelers.

The bill provides for the Department of Financial Services to adjust annually the minimum allowance levels based on inflation.

The bill also allows participants in the state group health insurance program's plans the option of using an open magnetic resonance imaging service when magnetic resonance imaging services are deemed appropriate by the referring physician.

The fiscal impact on state government is indeterminate but could be large; see fiscal comments. While the bill authorizes state and local governments to increase their per diem, subsistence, and mileage allowances, it does not require them to do so. The fiscal impact on state and local governments is thus indeterminate.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Per Diem and Subsistence Allowances

Sections 112.061, F.S., governs the per diem and travel expenses of agencies' public officers, employees, and authorized persons. "Agencies" are defined as any office, department, agency, division, subdivision, political subdivision, board, bureau, commission, authority, district, public body, body politic, county, city, town, village, municipality, or other separate unit of government created by law.¹ It places a variety of conditions on the travel that may be paid and what amounts may be paid.

The Florida Statutes list three types of travel: Class A, B, and C.

- Class A travel is continuous travel of 24 hours or more away from official headquarters.² The travel day for Class A is based on a calendar day (midnight to midnight). The per diem allowance for Class A travel is currently \$50.00.³
- Class B travel is continuous travel of less than 24 hours which involves overnight absence away from official headquarters.⁴ The per diem is \$50.00, pro-rated based on 6-hour periods; for instance, an overnight traveler returning at noon could receive \$25.00 per diem.
- Class C travel is short or day trips in which the traveler is not away from his or her official headquarters overnight.⁵

The Legislature set the per diem and subsistence allowances in 1981; the amounts have been unchanged since then.⁶ Adjusted for inflation, the value of the per diem in 2005 would be \$88.62 and the values of the subsistence allowances in 2005 would be \$6.29, \$12.59, and \$25.17.

Mileage

Travelers using privately-owned vehicles are entitled to a mileage allowance of 29 cents per mile or the common carrier fare for the travel, as determined by the agency head.

Health Plan Services

The statutes that authorize the state to contract with health maintenance organizations (HMO) are general in nature. HMO contracts are required to address "radiologic services" but do not specify that open magnetic resonance imaging services be provided.

Proposed Changes

¹ Section 112.061(2)(a).

² Section 112.061(2)(k).

³ However, if actual expenses exceed the allowable per diem, the amount allowed for meals for Class C travelers, plus actual expenses for lodging at a single occupancy rate may be paid.

⁴ Section 112.061(2)(l).

⁵ Section 112.061(2)(m). Section 112.061(5)(d) barred Class C travelers from receiving either per diem or subsistence allowances during the 2004-2005 fiscal year.

⁶ *West's Florida Statutes Annotated*, s. 112.061, F.S.

The bill creates distinctions between “state agencies” and “nonstate agencies” and “state travelers” and “nonstate travelers”; however, the bill does not define the terms.

The bill changes:

- The per diem allowances to \$90 for state travelers and up to \$90 for nonstate travelers.
- The subsistence allowances to \$5 for breakfast, \$11 for lunch, and \$23 for dinner for state travelers and nonstate travelers.
- The mileage allowance to 38 cents per mile for state travelers and nonstate travelers.

The bill provides that per diem, subsistence, and mileage allowances shall remain the same through FY 2004-05. Annually on June 1, the Department of Financial Services is to adjust by rule the minimum amounts of the per diem and subsistence to reflect changes in the Consumer Price Index.

The bill also allows participants in the state group health insurance program’s plans the option of using an open magnetic resonance imaging service when magnetic resonance imaging services are deemed appropriate by the referring physician.

C. SECTION DIRECTORY:

Section 1 amends s. 112.061, F.S., to provide revised per diem, subsistence, and mileage allowances for travelers and procedures for adjusting these amounts annually.

Section 2 provides an effective date of June 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

Potential expenditures are difficult to determine because per diem, subsistence, and mileage are only three components of travel; other travel expenses such as rental car charges, lodging, and air travel would be unaffected. Agencies also rarely separate out per diem, subsistence, and mileage charges in their accounting. Extrapolating from two agencies which do account for these expenses separately offers an idea of a range. Based on the Agency for Health Care Administration’s expenditures, the state may experience an estimated \$25.7 million in increased travel expenditures in FY 2005-06 for all agencies.⁷ Based on the Public Service Commission’s expenditures, the state may experience an estimated \$12.6 million in increased travel expenditures for all agencies in FY 2005-06.⁸

⁷ This estimate is calculated by extrapolating the increased travel expenditures estimated by AHCA (a 49% increase in the funding spent on per diem, subsistence, and mileage, which comprised 55% of AHCA’s total travel expenditures in FY 2003-04⁷) to the total travel by state agencies in FY 2003-04 (\$95,303,523). FLAIR data indicates total actual travel expenditures by AHCA of \$2,534,285 in FY 2003-04. As calculated from figures in the AHCA bill analysis for HB 221, the agency spent approximately \$1.4 million of the total travel for per diem, subsistence, and mileage that year (note that the agency did not expend funds for Class C travel). Based on FY 2000-01 expenditures, the agency estimated that approximately \$48,694 would be spent in Class C travel in FY 2005-06.

⁸ These calculations are similar to those described in footnote 7. FLAIR data indicates that the Public Service Commission expended approximately 27% of their travel budget for per diem, subsistence, and mileage, with total travel expenses of \$350,536. The calculations assumed that Class C meals expenditures would increase in a proportion similar to AHCA’s.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

Indeterminate. Local governments would not be required but could choose to increase or decrease the per diem, subsistence, and mileage they pay to their travelers. It is unknown which local governments would choose to change their allowances and by what amount.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: Indeterminate since it is unknown the degree to which travelers will adjust their spending. If agencies increase the allowances, some travelers may increase their spending while traveling and businesses such as restaurants would benefit. However, for travelers who have been supplementing the payment with their personal funds, the increased allowances may fully or partially supplant the personal spending with the result of lesser or no net increase in spending by those travelers. Similarly, if local governments chose to decrease their allowances, travelers may choose to either reduce spending, which would negatively impact businesses, or partially or fully supplant the reduced allowances with personal funds, which could have lesser or no negative impact.

D. FISCAL COMMENTS:

Since 1995, the Consumer Price Index for All Urban Consumers, U.S. City Average, has reflected annual increases ranging from 1.6% to 3.4% with an average increase of 2.1%.⁹

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to provide higher allowances to travelers. Additionally, Attorney General Opinion 2003-01 noted that the travel reimbursement rates established in s. 122.061, F.S., are considered, pursuant to the stated legislative intent of subsection (1), to be maximum rates; local governments may legislate on the subject of allowances, though they may not exceed them. Municipalities and their agencies may also exempt themselves from the provisions of s. 112.061, F.S., by creating its own per diem and travel expense policy and thus are not bound by the provisions of s. 112.061, F.S.¹⁰ Thus this bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that counties and municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None. The bill requires the Chief Financial Officer to “establish and publish” the subsistence amounts and per diem rates applicable for the next fiscal year. He or she determines these amounts by the applying a specific mathematical formula. Thus these amounts and rates do not need to be adopted by rule.

⁹ Data from the U.S. Department of Labor Bureau of Labor Statistics at <http://data.bls.gov/PDQ/servlet/SurveyOutputServlet>.

¹⁰ Section 166.021(10), F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The terms “state agency,” “state traveler,” “nonstate agency,” and “nonstate traveler” are not defined in either the bill or law. Defining these terms may clarify which entities belong in which group; however, there is no difference between the rates for state travelers and nonstate travelers, so the distinction does not seem to be necessary.

Deleting the word “establish” in the bill’s s. 112.061(15), F.S., would remove the implication that the Chief Financial Officer has some discretion in setting the subsistence and per diem amounts. Since there are a variety of Consumer Price Indices calculated by the U.S. Department of Labor, to reduce the Chief Financial Officer’s discretion even more, the bill could be amended to specify that the particular index used should include “all items” and be seasonally adjusted.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

At the March 16, 2005, meeting of the Governmental Operations Committee, the committee adopted an amendment and reported the bill favorably with a committee substitute.

The amendment set specific amounts for the allowances provided to employees rather than ranges in which various public officers could choose an amount to set for the agencies under their control. This amendment was amended to allow participants in the state group health insurance program’s plans the option of using an open magnetic resonance imaging service when magnetic resonance imaging services were deemed appropriate.